No. 345

In the Supreme Court of the United States

OCTOBER TERM, 1956

CHARLES ROWOLDT, PETITIONER

v.

J. D. PERFETTO, ACTING OFFICER IN CHARGE, IMMIGRATION AND NATURALIZATION SERVICE, DEPARTMENT OF JUSTICE, ST. PAUL, MINNESOTA

ON WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE EIGHTH CIRCUIT

BRIEF FOR THE RESPONDENT

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OPINIONS BELOW

The opinion of the Court of Appeals (R. 38–41) is reported at 228 F. 2d 109. The opinion of the District Court appears at pages 35–38 of the record.

JURISDICTION

The judgment of the Court of Appeals was entered December 22, 1955 (R. 41). The petition for a writ of certiorari was filed February 9, 1956, and was granted on March 26, 1956 (R. 42), 350 U. S. 993. The jurisdiction of this Court is invoked under 28 U. S. C. 1254 (1).

QUESTIONS PRESENTED

1. Whether the order for the deportation of petitioner as one who, after entry, had been a member of the Communist Party is based on evidence showing more than nominal membership in the Party.

2. Whether this Court's decision in *Galvan* v. *Press*, 347 U. S. 522, should be overruled.

STATUTES INVOLVED

Section 22 of the Internal Security Act of 1950, 64 Stat. 1006, 1008, provided in part as follows:

> That any alien who is a member of any one of the following classes shall be excluded from admission into the United States:
>
> * * * * *
>
> (2) Aliens who, at any time, shall be or shall have been members of any of the following classes:
>
> * * * * *
>
> (C) Aliens who are members of or affiliated with (i) the Communist Party of the United States * * *.

Section 4 under the aforesaid Section 22 provides in part:

> (a) Any alien who was at the time of entering the United States, or has been at any time thereafter, * * * a member of any one of the classes of aliens enumerated in section 1 (2) of this Act, shall, upon the warrant of the Attorney General, be taken into custody and deported in the manner provided in the Immigration Act of February 5, 1917. The provisions of this section shall be applicable to the

classes of aliens mentioned in this Act, irrespective of the time of their entry into the United States.[1]

Section 1 of the Act of March 28, 1951, 65 Stat. 28, 8 U. S. C. [1946 ed., Supp. V] 137–9, provided as follows:

> *Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled,* That the Attorney General is hereby authorized and directed to provide by regulations that the terms "members of" and "affiliated with" where used in the Act of October 16, 1918, as amended, shall include only membership or affiliation which is or was voluntary, and shall not include membership or affiliation which is or was solely (a) when under sixteen years of age, (b) by operation of law, or (c) for purposes of obtaining employment, food rations, or other essentials of living, and where necessary for such purposes.

STATEMENT

Petitioner seeks reversal of the judgment of the Court of Appeals (R. 41) affirming the dismissal by the District Court for the District of Minnesota of his petition for a writ of habeas corpus in which he attacked the validity of an order directing his deportation on the ground that he is an alien who, after

[1] These provisions were repealed by Section 403 (a) (16) of the Immigration and Nationality Act of June 27, 1952 (66 Stat. 163, 279). The 1952 Act recodified and reenacted these provisions without material change. See Section 241 (a) (6) (C), 66 Stat. 204, 8 U. S. C. 1251 (a) (6) (C).

entry, had been a member of the Communist Party (R. 1–3).

The immigration file, which was annexed to respondent's return (R. 3–8) and is part of the record, shows that petitioner, who was born in Germany in 1883, entered the United States for permanent residence in 1914 and last entered the United States in 1924 (R. 9, 12, 17). In 1936, he was ordered deported on the ground that he was a member of an organization (the Communist Party) which advocated the overthrow of the government by force and violence, but the order was not executed. The proceedings were cancelled in 1942 on the authority of *Kessler* v. *Strecker,* 307 U. S. 22, for the reason that petitioner was not shown to have been a member of the Party at the time of the hearing (see R. 9–10).

In 1948, after past membership in an organization advocating the violent overthrow of the government had been made a ground of deportation by the Act of June 28, 1940 (54 Stat. 673), petitioner was served with a warrant charging him with having been affiliated with such an organization (R. 16). Hearings under the warrant were invalidated by reason of the decision of this Court in *Wong Yang Sung* v. *McGrath,* 339 U. S. 33, that deportation hearings must be conducted in accordance with the Administrative Procedure Act (R. 16). After Congress, by a rider to the Appropriation Act of 1951 (64 Stat. 1044, 1048), exempted deportation hearings from the Administrative Procedure Act, a new hearing was commenced on February 16, 1951. On that date, an

additional charge was lodged against petitioner under Section 22 of the Internal Security Act of 1950 (*supra*, pp. 2–3) charging him with having been, after entry, a member of the Communist Party of the United States (R. 10, 17). The hearing was then adjourned to March 28, 1951, to allow petitioner time to meet the additional charge (R. 18). At the conclusion of the adjourned hearing, the hearing officer found petitioner deportable as an alien who had been, after entry, a member of the Communist Party (R. 16–20). His recommendation was approved by the Assistant Commissioner (R. 10, 11–15) and an appeal to the Board of Immigration Appeals was dismissed, the Board concluding that the evidence supported the finding of membership in the Communist Party (R. 9–11).

The evidence of petitioner's membership rests for for the most part on sworn testimony by petitioner himself before an immigration inspector on January 10, 1947. After the inspector had warned petitioner that anything he said might be used against him and petitioner had made statements, not under oath, to the effect that he wanted to return to Germany and for that reason had not fought very hard on his unsuccessful petition for naturalization (R. 20–23), petitioner agreed to give testimony under oath. After being sworn, he stated that he joined both the Communist Party and the Workers Alliance in the spring or early summer of 1935. While in the Communist Party, he paid dues (R. 26) and attended Communist Party meetings where the members talked about

"fighting for the daily needs". (R. 31). He gave as his reason for joining the fact that the Communist Party (R. 26) "had one aim—to get something to eat for the people" and that (R. 31) "everybody around me had the idea that we had to fight for something to eat and clothes and shelter". He further explained his joining the Party as follows (R. 31):

> We had to go and ask those who had it—that was the courthouse at that time. We petitioned city, state and national government. We did and we succeeded. We finally got unemployment laws and a certain budget. Even at the few communist meetings I attended, nothing was ever said about overthrowing anything. All they talked about was fighting for the daily needs. * * *

When asked whether he was an active worker in the Communist Party, he replied "The only active work I did was running the bookstore for a while" (R. 28). The following then ensued (R. 28–29):

> Q. Did you own the bookstore?
>
> A. No, I didn't get a penny there.
>
> Q. What was the arrangement there?
>
> A. I was kind of a salesman in there, but the Communist Party ran it.
>
> Q. You secured this employment through your membership in the Communist Party?
>
> A. Yes.
>
> Q. Was this store an official outlet for communist literature?
>
> A. Yes.

Petitioner dropped out of the Communist Party when he was arrested under the first deportation

warrant about the end of 1935 (R. 26).[2] He remained in the Worker's Alliance "probably a couple of years longer" until that organization dissolved itself. While a member of the latter organization, he served on its executive board and occasionally served as secretary for a local unit (R. 26).

An order directing petitioner's deportation was issued on April 16, 1952 (R. 33–34). In March, 1955, after petitioner had been taken into custody for immediate deportation to Germany, the petition for habeas corpus was filed (R. 1–3).[3]

In dismissing the petition, the District Court held that the evidence produced at the hearing sustained petitioner's deportability under the definition of membership laid down by this Court in *Galvan* v. *Press*, 347 U. S. 522 (R. 35–38).[4] The Court of Appeals, in

[2] Petitioner states in his brief (Pet. Br. 21) that he was a member of the Communist Party only "about six months". In his sworn statement to the Immigration and Naturalization Service when asked whether he was a member for "approximately one year" he answered (R. 26), "Yes, probably something like that". He had previously testified however that he joined the Party (R. 25) "in the spring or summer of 1935" and was a member (R. 26) "from then on until I got arrested and that was at the end of 1935."

[3] After the original petition for habeas corpus was filed, a supplemental petition alleged, as an additional reason for a stay of deportation, that petitioner had applied to the Board of Immigration Appeals for vacation of the order of deportation in order to enable him to apply for suspension of deportation (R. 37). That motion, we are informed, was denied by the Board of Immigration Appeals in June, 1955, after the judgment of the District Court in this proceeding.

[4] The original petition for habeas corpus challenged generally the constitutionality of the order of deportation and the propriety of the procedures (R. 1–3). After the hearing on an order to

affirming the order of the District Court, held that there was "an adequate evidentiary basis for the finding that Rowoldt was a member of the Communist Party in 1935"; and that like Galvan (347 U. S. at 529) "the record does not show a relationship to the Party so nominal as not to make him a 'member' within the terms of the Act" (R. 41).

SUMMARY OF ARGUMENT

I

This Court in its opinion in *Galvan* v. *Press*, 347 U. S. 522, upheld the constitutionality of Section 22 of the Internal Security Act of 1950, *supra*, pp. 2–3, as applied to an alien who had voluntarily joined the Communist Party, after entry, without proof that the alien "had joined the Party with full appreciation of its purposes and program" (*Ibid.*, p. 526). The opinion, however, contains a caveat on the nature of "membership," based on congressional discussion at the time of the enactment of Section 1 of the Act of March 28, 1951, *supra*, p. 3, seeking to clarify for administrative purposes the scope of the term "members of" as used in Section 22. The Court observed that Congress had not intended to include within that term those aliens who had joined the Communist Party when they were children, or who had become members by operation of law, or had joined "to obtain the necessities of life", or those

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show cause why the writ should not issue, the District Court permitted petitioner to amend his petition to raise specifically the question of the sufficiency of the evidence to support the order of deportation (R. 34–35).

"who, accidentally, artificially, or unconsciously in appearance only, are found to be members of or affiliated with an organization of whose platforms and purposes they have no real knowledge". Petitioner erroneously attempts to bring his case within that caveat on the ground that his motivation in joining the Communist Party was economic necessity and that, in seeking to bring about economic reforms through Communist Party action, he was unaware that the Party operated as a distinct political organization.

A. First, it is evident that petitioner was aware that he was joining the Communst Party as such. There is no suggestion in the record, and petitioner does not now argue, that he mistook the Communist Party for any other organization, such as the Workers Alliance in which he was also an active member and an officer. As a member, moreover, he assumed an active role in local Party activities, being selected by the Party soon after joining to operate its bookstore and to sell Communist literature. He participated in Communist meetings and his knowledge of the basic tenets of Communism, apparently relating back to the period of his membership, is evidenced in numerous instances throughout his sworn statement.

B. Second, it is apparent that petitioner did not join the Party under duress or for reasons of personal economic necessity. Aside from his admission that he worked for the Communist Party in a significant local position without remuneration, his statements in the record indicate that he joined the Party to seek

ultimate economic benefits to society generally through governmental reforms. This is not the type of personal economic compulsion which Congress intended should excuse Communist Party membership from the reach of Section 22 of the Internal Security Act of 1950. The legislative history of Section 22, as well as the congressional comments at the time Congress enacted the Act of March 28, 1951, *supra*, p. 3, make it clear that Congress considered as involuntary only the membership of those aliens, principally "Iron Curtain" emigres, who had been coerced to join Communist organizations in their own countries for compelling economic reasons and as a minimum condition of subsistence.

Petitioner is clearly not of that category. He freely joined the Communist Party in a country and under conditions which did not make such membership a condition for employment. He apparently received no personal material benefit from the Party whatsoever, but rather volunteered his services for general political purposes and left the Party only to avoid threatened deportation.

C. Third, petitioner now contends for the first time that he joined the Communist Party unaware that it operated "as a distinct and active political organization" and that he had no real knowledge of its "platform and purposes". While he does not dispute that he knew that he was joining the Communist Party as such, his position seems to be that his interest in joining was only to further the immediate economic program of the Party. His knowledge of the Com-

munist classics, his activity in running the Party bookstore, his participation in Communist Party meetings, his statement that he joined the Party to seek economic reforms through methods constituting political action, and his further statement that since he had known the Communist Party they had been striving "to set up an economic system to get the people out of a monopoly control on to their own economic feet", all show that he had not mistaken the Party for a social agency and was not oblivious of its character as a political entity.

In any event, as this Court held in its *Galvan* decision in response to a similar contention by that petitioner (347 U. S. at 526), awareness of the Communist Party's purposes and program is not an essential condition of deportability under Section 22. Even under the Alien Registration Act of 1940, it was not incumbent on the government to prove, in addition to membership in an organization advocating overthrow of the United States by force and violence, that alien members had subscribed to the political objectives of such an organization.

D. Fourth, petitioner argues that the brief period of his membership, the asserted unimportance of his activities for the Party, and the meritorious objectives and purposes which he says he hoped to achieve show—in totality—that his membership was "nominal". Congress did not, however, intend that "membership" within the meaning of Section 22 depend on the extent and duration of the alien's activities in and for the Communist Party. During consideration of

the 1951 clarifying legislation (*supra,* p. 3), it was recognized that an exception might exist where aliens passed from one organization (*e. g.*, the Socialist Party) into a proscribed one (*e. g.*, the Communist Party) supposing the change to be a mere change of name (the situation involved in *Colyer* v. *Skeffington,* 265 Fed. 17; 72 (D. Mass.), cited in the legislative record as an instance of accidental, artificial, or unconscious membership). But petitioner was not that kind of member. He, like Galvan, joined the Communist Party with knowledge that he was joining that specific organization, and no other, and "of his own free will". 347 U. S. at 528.

E. There is therefore no basis for remanding this case for further administrative proceedings. It is not denied that petitioner did join the Communist Party, that he knew it to be such, that he attended meetings, ran its bookstore, and finally resigned only because of fear of deportation. Unlike the case of *Garcia* v. *Landon,* 348 U. S. 866, the record is in no respect equivocal as to these controlling facts. Rather, the case is like *Galvan* in which remand was not ordered.

Furthermore, petitioner made no claim to the immigration authorities that his admitted membership was merely nominal and it cannot be assumed that they would have failed to consider his claim had it been fairly presented or had the facts justified its consideration otherwise. While this Court's *Galvan* decision had not been rendered at the time of petitioner's hearing, that decision did not read new mean-

ing into the terms "members of" in the context of Section 22, but adopted the meaning given that term by Congress, a term which, by the time of petitioner's hearing, had not only been clarified by the Act of March 28, 1951 (*supra,* p. 3) but by a new regulation of the Immigration and Naturalization Service. The issues belatedly raised by petitioner do not depend upon the resolution of conflicting facts, but raise solely a question of law on undisputed facts.

II

In his petition for a writ of certiorari, petitioner suggested without elaboration that there are additional constitutional issues in this case not covered by this Court's *Galvan* decision. In his brief, however, he does not pursue this argument but seeks to reargue the broader constitutional issues which were before this Court, not only in the *Galvan* case, but also in *Harisiades* v. *Shaughnessy,* 342 U. S. 580.

All of the issues raised by petitioner have been recently and exhaustively considered by this Court in the *Galvan* and *Harisiades* cases, and comprehensive briefs analyzing both the precedents and the legislative background of this type of deportation legislation were submitted to this Court by the government. The Court, moreover, has indicated in two more recent opinions (*Jay* v. *Boyd,* 351 U. S. 345, 348; *Marcello* v. *Bonds,* 349 U. S. 302, 314) its adherence to its *Galvan* and *Harisiades* rulings. While the Court may sometimes feel called upon to reconsider past constitutional decisions—in the light of new facts,

changing history, or recent developments in constitutional principles—the issues raised in this case have been recently settled after intensive scrutiny of the special problem involved. Petitioner presents nothing new, and there is nothing to evoke a third reconsideration of those issues.

While for these reasons we shall not reargue here our position as to the constitutionality of Section 22, or the validity of this Court's reasoning sustaining that position in the *Galvan* case, it is appropriate to point out that petitioner erroneously conceives that case to hold that "Congress may expel aliens for causes which have no rational relationship to their desirability as residents, and which may be wholly arbitrary, whimsical, or worse". The opinion did not establish any such broad ruling. The Court observed that Congress had formulated its policy toward alien Communists after "extensive investigation" and on the basis of the legislative findings incorporated in Section 2 (1) of the Internal Security Act, and the Court then concluded that it could not judicially determine that the legislative classification is so baseless as to be violative of due process, particularly because such determinations are peculiarly concerned with the political arms of government. Petitioner's arguments seeking to impeach the factual premises on which Congress acted do not justify judicial reevaluation of its conclusions; and his discussion of the severity of the legislation presents a factor not pertinent to the Court's function in passing on statutes of this

ARGUMENT

I

PETITIONER WAS MORE THAN A NOMINAL MEMBER OF THE COMMUNIST PARTY

In *Galvan* v. *Press*, 347 U. S. 522, this Court upheld the constitutionality of Section 22 of the Internal Security Act of 1950, *supra*, pp. 2–3, providing for the deportation of any alien who has been a member of the Communist Party at any time after entry, as applied to a past member of the party, without proof that the alien "had joined the Communist Party with full appreciation of its purposes and program" (347 U. S. 526). The Court said, 347 U. S. at 528:

> It must be concluded, therefore, that support, or even demonstrated knowledge, of the Communist Party's advocacy of violence was not intended to be a prerequisite to deportation. It is enough that the alien joined the Party, aware that he was joining an organization known as the Communist Party which operates as a distinct and active political organization, and that he did so of his own free will. A fair reading of the legislation requires that this scope be given to what Congress enacted in 1950, however severe the consequences and whatever view one may have of the wisdom of the means which Congress employed to meet its desired end.

The opinion, however, contains a caveat on the nature of membership (347 U. S. at 526–528):

> While the legislative history of the 1950 Act is not illuminating on the scope of "member,"

considerable light was shed by authoritative comment in the debates on the statute which Congress enacted in 1951 to correct what it regarded as the unduly expanded interpretation by the Attorney General of "member" under the 1950 Act. 65 Stat. 28. The amendatory statute dealt with certain specific situations which had been brought to the attention of Congress and provided that *where aliens had joined a proscribed organization* (1) when they were children, (2) by operation of law, or (3) *to obtain the necessities of life, they were not to be deemed to have been "members."* In explaining the measure, its sponsor, Senator McCarran, stated repeatedly and emphatically that "member" was intended to have the same meaning in the 1950 Act as had been given it by the courts and administrative agencies since 1918, 97 Cong. Rec. 2368–2374. See S. Rep. No. 111, 82d Cong., 1st Sess. 2; H. R. Rep. No. 118, 82 Cong., 1st Sess. 2. To illustrate what "member" did not cover he inserted in the Record a memorandum containing the following language quoted from *Colyer* v. *Skeffington*, 265 F. 17, 72: "Congress could not have intended to authorize the wholesale deportation of aliens who, accidentally, artificially, or unconsciously in appearance only, are found to be members of or affiliated with an organization of whose platform and purposes they have no real knowledge." 97 Cong. Rec. 2373.

Petitioner's first endeavors to bring his case within his caveat on the ground that his motivation in joining the Party was economic necessity and that, in seeking to bring about economic reforms through

Communist Party action, he was unaware that the Party operated as a distinct political organization. But this argument is refuted by the record which shows that, as an educated and articulate alien,[5] he was aware that he was joining the Communist Party as such; that he joined, not out of his own economic necessity, but to participate in its activities; and that he did actively participate in the councils of the Party and in operating its bookstore in Minneapolis. He was more than a nominal member.

A. PETITIONER WAS AWARE THAT HE WAS JOINING THE COMMUNIST PARTY

Petitioner freely admitted that in the spring or early summer of 1935 he joined both the Communist Party and the Workers Alliance. There is no suggestion and petitioner does not even urge that he did not know the difference between the two organizations. He himself explained the different methods of paying dues in each organization, and further stated that he left the Party at the time of his first arrest for deportation at the end of 1935, but continued not only as an active member of the Alliance but as a member of its executive board and occasionally as secretary for one of its locals prior to its dissolution some two years late (R. 25–26).

While he terminated his membership in the Communist Party at the end of 1935 because of pending deportation proceedings, he was by no means merely a nominal or even passive member while he was in

[5] He testified that his education included "something like high school in Germany" (R. 32).

the Party. As a Communist Party member he was chosen by the Party to operate its bookstore in Minneapolis, Minnesota, which was an official outlet for Communist literature operated by the Party to distribute such party-line classics as the works of Strachey, Marx, Lenin, and other writers. In addition, his acquaintance with the Communist classics, apparently relating back to the period of his membership, is evidenced in his sworn statement (*e. g.*, R. 27, 28, 31). He attended party meetings where party policy in regard to the economic situation was discussed (R. 31), and when asked whether his "beliefs in government have changed during the past ten years" he replied (R. 30–31), "Yes, it has changed to that extent—that I began thinking for myself instead of following somebody else telling me things." He thus was well aware that the organization which he joined was the Communist Party.[6]

B. PETITIONER'S MEMBERSHIP IN THE COMMUNIST PARTY WAS VOLUNTARY

While petitioner seeks to explain his membership as motivated by dire personal economic necessity, the fact that he received no pay for his voluntary work

[6] Petitioner does not challenge the right of the immigration authorities to rest their findings and the warrant of deportation on his own voluntary admissions, and it has been held that this can be done. *Schoeps* v. *Carmichael*, 177 F. 2d 391 (C. A. 9), certiorari denied, 339 U. S. 914; *Navarrette-Navarrette* v. *Landon*, 223 F. 2d 234 (C. A. 9), certiorari denied, 351 U. S. 911. Cf. Wigmore, *Evidence* (3rd ed.), Sec. 1048; A. L. I., *Model Code of Evidence* (1942), p. 245; *Wong Kon Foon* v. *Brownell*, 218 F. 2d 444, 446 (C. A. 9); *Milton* v. *United States*, 110 F. 2d 556, 560 (C. A. D. C.); *United States* v. *United Shoe Machinery Corp.*, 89 F. Supp. 349, 351–2 (D. Mass.).

for the Party (*e. g.*, (R: 28), "No, I didn't get a penny there") disproves his contention. And while he metaphorically replied, when asked why he joined the Party (R. 31), "we wanted something to eat and something to crawl in", he then explained this statement as follows (R. 31):

> We had to go and ask those who had it—that was the courthouse at that time. We petitioned city, state and national government. We did and we succeeded. We finally got unemployment laws and a certain budget. Even at the few communist meetings I attended, nothing was ever said about overthrowing anything. All they talked about was fighting for the daily needs. That is why we never thought much of joining those parties in those days.

In response to a similar question earlier, he had replied (R. 26):

> The purpose was probably this—it seemed to me that it came hand in hand—the Communist Party and the fight for bread. It seemed to me like this—let's put it this way—that the Communist Party and the Workers' Alliance had one aim—to get something to eat for the people. I didn't know it was against the law for aliens to join the Communist Party and the Workers' Alliance. I found that out when Mr. Adams told me.

It is apparent therefore that petitioner was not one who turned in desperation to the Communist Party "for purposes of obtaining employment, food rations, or other essentials of living" within the meaning of the Act of March 28, 1951, Sec. 1, *supra*, p. 3. Pe-

titioner claimed only that he was drawn to the Communist Party because of his notion that the Party was the appropriate channel through which to seek social reforms, and through which to secure ultimate economic benefits to society generally. This rationale for the employment of Marxian methods is the central theme of all Communist thinking. It is not the type of personal economic compulsion to which the clarifying amendment of the 1951 Act was directed.

This conclusion, clear enough from the language of the 1951 Act, is fortified by consideration of the Act's legislative background. Following passage of the Internal Security Act of 1950, some disagreement arose as to the meaning of the term "member" within the context of Section 22. The Attorney General, in administering the exclusion provisions of the immigration laws, took the position that the term was to be strictly and literally applied under the new legislation, regardless of the fact that the alien might have been compelled to join a totalitarian party in his country of origin to obtain food rations and subsistence. The State Department took the position that the term "members" should be interpreted as it had been understood prior to enactment of the 1950 legislation, so as not to include those cases where the alien's membership was involuntary or purely nominal. This impasse resulted in a situation where the State Department either had to refuse immigrant visas to aliens within the disputed categories or grant them permanent visas only to have the aliens either excluded on arrival or admitted only temporarily

clarifying legislation in 1951, 2,400 persons wer

under the contrary interpretation of Section 22 by the Department of Justice, H. Rep. 118, 82d Cong., 1st Sess., p. 1; S. Rep. 111, 82d Cong., 1st Sess., p. 2; 97 Cong. Rec. 2370, 2374. Prior to the enactment of ~~scribed organizations, of whom nine-tenths were~~ temporarily excluded because of membership in proscribed organizations, of whom nine-tenths were nominal or involuntary. *Annual Report of the Attorney General* (1951), p. 449.[7]

[7] The inconsistency in interpretation of the terms "members of" is illustrated in the following excerpt from a memorandum inserted in the record by Senator McCarran during debate on the Act of March 28, 1951 (*supra*, p. 3), which resolved the administrative conflict (97 Cong. Rec. 2373):

"2. Administrative interpretation: The Peoples' Front of Yugoslavia, known as the Narodni Front, at its third conference in April 1949, declared itself to be a political entity of the Communist Party of Yugoslavia.

"Although the administrative authorities have ruled that the Narodni Front of Yugoslavia is a subversive organization, within the purview of the act of October 16, 1918, membership by an alien in which organization would make the alien excludable, the Department of State ruled that membership in the Narodni Front which was induced for the purpose of obtaining food rations, job or housing permits, was not the type of membership contemplated by the act of October 16, 1918, so as to work an exclusion of aliens so induced unless the aliens also had an ideological affinity for the organization or were Communists in fact. The Department of Justice has admitted into the United States a number of aliens who obtained visas under this ruling.

"It is puzzling to me that the administrative authorities would rule that aliens who joined a Communist organization allegedly to procure economic benefits are not excludable from the United States as 'members' of a subversive organization, but that Basque sheepherders who fought against the Communists are excludable because a Spanish law made them members of a subsidiary of the Spanish Falange, which they have never joined and in whose activities they have never taken part."

Since the sponsors of the Internal Security Act of 1950 and various interested committees of both houses concurred in the more liberal interpretation given the term "members of" by the State Department (97 Cong. Rec. 2371), various bills were introduced to procure the issuance of correcting regulations by the Attorney General. The original bills reported out of the House and Senate Judiciary Committees (H. R. 2239; S. 728) would have, by virtue of a limiting clause, excepted from the term "members" in Section 22 only aliens who joined a *non-Communist* proscribed organization (1) when they were children, (2) by operation of law, or (3) "for purposes of obtaining employment, food rations, or other essentials of living, and where necessary for such purposes." These bills would have had the effect of barring from admission to the United States even involuntary members of Communist organizations, without exception. During debate, the inconsistency of denying the escape provisions to involuntary members of Communist organizations, particularly those who had lived in Communist-dominated countries, was pointed out by Senator Lehman and others (97 Cong. Rec. 2372, 2380, 2383), and correspondence was inserted in the record to show that such policy would have an adverse effect on the displaced persons program[*] and on further emigra-

[*] In a detailed summary of conditions in the Soviet-dominated countries prepared by the Displaced Persons Commission in connection with the proposed legislation (97 Cong. Rec. 2376-2380), it was pointed out that it was practically impossible to exist in the Soviet Union without belonging to some organization created, dominated, or controlled by the Communists (*Ibid.*, p. 2380), and that much the same situation prevailed in other satellite states, as

tion from the "Iron Curtain" countries. 97 Cong. Rec. 2376–2383. To correct this deficiency, the limiting clause was removed from the legislation, on motion from the floor by Senator Ferguson (97 Cong. Rec. 2368, 2374).

During the floor debate, the following discussion occurred between Senator Nixon and Senator McCarran of the Senate Judiciary Committee (97 Cong. Rec. 2369–2370):

> Mr. NIXON. I think so far as the term "membership" is concerned, that when that term was written into the Internal Security Act of 1950 the Congress intended that membership, by its very nature, should be voluntary.
>
> Mr. MCCARRAN. That is correct.
>
> Mr. NIXON. Prior to 1950, "membership" had been interpreted by the Justice Department and by the State Department in exactly that way. Unless membership is voluntary, it was not presumed that a person was a member of a certain organization. After the passage of the act, however, a new interpretation was given, and any membership, even nominal membership, and even though it was the result of duress or various circumstances covered by the

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for instance the Ukraine, where the situation was described as follows (*Ibid.*, p. 2379):

"Workers in the industrial centers of the Ukraine were required to belong to so-called Soviet trade unions in order to secure work. Here again these trade unions are not free, but are completely under the domination and control of the Soviet Government. All phases of life in the Ukraine were under the control of the Soviets, and it was practically impossible to exist without belonging to one or several of the organizations created by, or dominated and controlled by, the Soviet regime."

amendment which the Senator from Nevada has offered, was held to be membership, was it not?

Mr. McCARRAN. It was so held.

Mr. NIXON. All we are doing by this amendment is to instruct the Department of Justice, in effect, to interpret the word "membership" as it had previously been interpreted prior to 1950, and as the Congress intended and expected it would be interpreted when the law was passed. Is that not correct?

Mr. McCARRAN. It was so considered and was so written into the law by the committee which handled the bill, and by the conference committee as well.

Later, in explaining the legislation, Senator McCarran said (*Ibid.*, pp. 2370–2371):

> The third general group—and again, substantial numbers of spouses of members of the United States Armed Forces are included—*consists of aliens who were forced to become members of totalitarian organizations in order to obtain food ration cards, housing, employment, and other essentials of living.* [Emphasis added.]
>
> This class of cases is taken care of by the phrase lettered (c), which, read in context, provides that the terms "members of" and "affiliated with" shall not include "membership or affiliation which is or was solely * * * (c) for purposes of obtaining employment, food rations, or other essentials of living, and where necessary for such purposes."

Aside from the above italicized language there is other cogent evidence in the debates that the third

escape provision related only to aliens who had been "forced to become members of totalitarian organizations" in order to procure the "essentials of living", principally in totalitarian countries. The following comments were made after Senator Ferguson introduced his amendment to extend the category of exceptions listed in the proposed bill to include nominal Communist Party "members" (97 Cong. Rec. 2368, 2369):

> Mr. McCarran. Mr. President, the effect of the amendment the Senator offers would be to let down the bars with respect to Communists who could establish that their membership in or affiliation with a Communist organization was involuntary, having be during infancy, or by operation of law, or for purposes of obtaining employment, food rations, or other essentials of living, and where necessary for such purposes.
>
> Mr. Ferguson. That is correct; the amendment would exclude all those who were Communists by conviction, what we might call mentally Communist. But it would not exclude those who really, in effect, never have been what I call mentally Communist—those whose Communist affiliation was nominal or involuntary.
>
> * * * * *
>
> Mr. Aiken. To what extent are there involuntary members of the Communist Party? We know there were involuntary members of the Fascist and certain other extreme right-wing parties; but are there involuntary members of the Communist Party?
>
> Mr. McCarran. We are advised that there are, and we are advised that many of them now

entirely renounce any principle of the Communist Party, because they were forced into it. I refer to the group of those who may have been forced into the party by dint of laws or regulations or conditions under which they existed, or because they were immature children at the time when they were forced in.

* * * * *

Mr. SMITH of New Jersey. That is the first question. Would the pending bill exclude, for instance, a Ukrainian who lived in the Soviet Union and who was forced to belong to a Kulak farm cooperative in order to obtain work. Would such a man be excluded?

Mr. MCCARRAN. If he were not a Communist but was forced into that so-called union in order to obtain work, it would not exclude him.

Also, in discussing the error of the Department of Justice's interpretation of the term "members of" in visa and exclusion cases, Senator McCarran said (97 Cong. Rec. 2370):

> * * * Many of these cases involve spouses of servicemen who have been denied visas or admission into the United States *on the basis of some instance of involuntary membership or affiliation*, such as a membership or affiliation which occurred at tender years, by operation of law, or for purposes of obtaining employment, food rations, and the like. * * * [Emphasis added.]

These extracts from the Senate debates on the 1951 clarifying legislation show a congressional purpose to include within the phrase "members of" all aliens

who joined the Communist Party of their own free will, and to exclude only those who joined under such duress or misapprehension of facts as to make their membership truly involuntary. The examples given of those who should be exempted from the general ban involved aliens who, while living in Fascist, Nazi, and Communist dictatorships, joined proscribed organizations because the price of nonconformity was death, imprisonment, or severe economic sanctions.[9]

This petitioner, on the other hand, voluntarily joined the Party in a country and under conditions which did not make such membership a minimum condition for employment or subsistence. He was not a child, but an adult 51 years old. He was more than a passive joiner. He worked for the Party organization in a post of some significance—salesman in the Party bookstore in a metropolitan center—without compensation to himself, and left the Party only because his continued membership jeopardized his continued residence in this country. So far as the record shows, he received no personal material benefit from the Communist Party whatsoever. Certainly, therefore, it cannot be said that he either joined or remained in the Party by virtue of any conditions imposing such economic duress as would make his

[9] Senators Aiken and Nixon adverted to the fact that the Communist Party itself is "rather exclusive" and "does not contain members who are involuntary members or who were brought into the organization by force or duress". They observed, however, that the membership of many aliens in Communist-affiliated organizations was involuntary, and would come within the escape provision if extended to past members of such proscribed organizations. 97 Cong. Rec. 2369.

membership involuntary. There is a wide disparity between his case and the instances of the "Iron Curtain" emigres cited by members of the Senate Judiciary Committee. It follows that petitioner cannot qualify under the exception to Section 22 contemplated by Congress and incorporated in the *Galvan* opinion.

C. IT IS IMMATERIAL THAT PETITIONER MAY HAVE BEEN UNCONCERNED WITH OR UNAWARE OF THE COMMUNIST PARTY'S ULTIMATE POLITICAL OBJECTIVES WHEN HE JOINED IT

Petitioner now contends for the first time that in joining the Communist Party he was unaware that it operated "as a distinct and active political organization" and that he had no real knowledge of its "platform and purposes" (Pet. Br. 23). His position seems to be that while he joined the Party, aware that he was joining an organization known as the Communist Party (see *Galvan* v. *Press*, 347 U. S. at 528), "he gave no thought to the organization as a distinct political organization" (Pet. Br. 23) but was concerned only with its economic activities.

Even if petitioner's premise were well taken that amenability to deportation for Communist Party membership is conditioned on proof that the alien was fully cognizant that the Party was a political entity, as well as an organization with immediate economic objectives, the evidence in this case refutes his contention. The fact that petitioner was chosen by the Communist Party to run its bookstore shortly after joining, and his acquaintance with the Party classics (apparently relating back to the period of

his membership), support the inference that he was not totally oblivious of its political objectives. There is also his statement that he joined the Party to petition the political agencies of government to obtain unemployment relief, and his testimony that having (R. 31–32) "seen the Communists working, *since I knew of them,* they are aiming, more or less, with forever [sic] methods to set up an economic system to get the people out of a monopoly control on to their own economic feet." [Emphasis added.] These facts and the evidence summarized above (*supra,* pp. 5–7) compel the conclusion that petitioner was no "innocent dupe" (Cf. *Galvan* v. *Press, supra,* 347 U. S. at 526) who mistook the Communist Party for a social agency. By his own admission, he joined the Party to seek economic reforms for the unemployed through political action (*e. g.,* petitioning for and obtaining from (R. 31) "city, state and national government * * * unemployment laws and a certain budget").

His position here seems to be that, while he was aware of the immediate political and economic objectives of the Party in meeting the depression problems at hand, he was unaware of the more fundamenfal political objectives of the Party including advocacy of force and violence to obtain these goals. This also appears to have been his position in 1947 when, after admitting in a sworn statement that he joined the Party to seek governmental reforms, he explained (R. 31):

> Even at the few communist meetings I attended, nothing was ever said about overthrowing anything. All they talked about was fight-

> ing for the daily needs. That is why we never thought much of joining those parties in those days.

The same position was taken by Galvan who urged the Court (*Galvan* v. *Press, supra,* 347 U. S. at 525-526) "to construe the Act as providing for the deportation only of those aliens who joined the Communist Party fully conscious of its advocacy of violence, and who, by so joining, thereby committed themselves to this violent purpose." [10] However, the Court expressly rejected this contention (347 U. S. at 526):

> *But the Act itself appears to preclude an interpretation which would require proof that an alien had joined the Communist Party with full appreciation of its purposes and program.* In the same section under which the petitioner's deportation is sought here as a former Communist Party member, there is another provision, subsection (2) (E), which requires the exclusion or deportation of aliens who are "members of or affiliated with" an organization required to register under the Internal Security Act of 1950, "unless such aliens establish that they did not know or have reason to believe at the time they became members of or affiliated with such an organization * * * that such

[10] The petitioner in *Galvan* v. *Press, supra,* like Rowoldt, took the position that his interest in the Party was confined to one phase of its activities. Galvan stated in response to a question whether he had ever attended meetings of the Spanish Speaking Club, an alleged Communist Party unit, "The only meetings I attended were relating to the Fair Employment Practices Committee". 347 U. S. at 524. He argued here (347 U. S. at 528) "first, that he did not join the Party at all, and that if he did join, he was unaware of the Party's true purposes and program"

> organization was a Communist organization." 64 Stat. 1007. In describing the purpose of this clause, Senator McCarran, the Act's sponsor, said: "Aliens who were innocent dupes when they joined a Communist-front organization, as distinguished from a Communist political organization [such as the Communist Party], would likewise not ipso facto be excluded or deported." 96 Cong. Rec. 14180. In view of this specific escape provision for members of other organizations, *it seems clear that Congress did not exempt "innocent" members of the Communist Party.* [Emphasis added.]

Even under the Alien Registration Act of 1940 [11] it was not incumbent on the government to prove, in addition to membership in an organization advocating overthrow of the United States by force and violence, that the alien subscribed to the political objectives of the organization. *Harisiades* v. *Shaughnessy*, 342 U. S. 580.[12] Petitioner's assertion, therefore, that

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[11] The Act of October 16, 1918 (40 Stat. 1012), as amended by the Act of June 5, 1920 (41 Stat. 1008), and the Act of June 28, 1940 (54 Stat. 670, 673, 8 U. S. C. (1946 ed.) 137, provided:

"SEC. 1. That any alien who, at any time, shall be or shall have been a member of any one of the following classes shall be excluded from admission into the United States.

* * * * *

"(c) Aliens who believe in, advise, advocate, or teach, or who are members of or affiliated with any organization, association, society, or group, that believes in, advises, advocates, or teaches: (1) the overthrow by force or violence of the Government of the United States or of all forms of law, * * *."

[12] The secure legislative foundation for the Court's conclusion in *Harisiades and Galvan* is spelled out in the Government's briefs in those cases: *Harisiades*, Oct. Term 1951, pp. 29–47; *Galvan*, Oct. Term 1953, pp. 67–69, and Supplemental Memorandum, pp. 2–11.

(Pet. Br. 23), "in joining an organization whose one aim was, he thought, to fight for bread, [he] was not thereby committing himself to a political platform as commonly understood", would not, even if such conclusion were justified on the evidence, establish that he was not a "member" of the Communist Party within the meaning of Section 22.

D. PETITIONER'S MEMBERSHIP IN THE COMMUNIST PARTY WAS NOT ACCIDENTAL, ARTIFICIAL, OR IN NAME ONLY

Petitioner also urges that in its totality—considering the brief period of his membership, the relative unimportance of his activities in the Party (which he assumes without amplification), and the meritorious objectives he says he hoped to achieve—his membership must be considered as "nominal". He relies on the language from *Colyer* v. *Skeffington*, 265 Fed. 17, 72 (D. Mass.), quoted by this Court in *Galvan*, 347 U. S. at 527, 528, that "Congress could not have intended to authorize the wholesale deportation of aliens who, accidentally, artificially, or unconsciously in appearance only, are found to be members of or affiliated with an organization of whose platform and purposes they have no real knowledge". But the type of nominal membership there referred to is explained by the illustration in the *Colyer* opinion immediately preceding that quotation:

> ** * * I do not think that Congress meant to authorize the expulsion of aliens who pass from one organization into another, supposing the change to be a mere change of name, and that by assenting to membership in the new organization they had not really changed their affiliations or political or economic activities.* For

> illustration: When, at meetings of a local of the Socialist Party, notice was given that the local had been expelled or had seceded from the Socialist Party and would thereafter take the name "Communist", and that signatures for membership in the new organization were requisite, nothing more appearing, I could not hold that such new membership, thus created, brings the new members within the purview of the act of Congress. [Emphasis added.]

Petitioner was not that kind of nominal member, suddenly and automatically transferred, without his real knowledge or consent, from one organization to another. He voluntarily and consciously joined the Communist Party, as such (*supra*, pp. 5–7, 17–19, 27–28).

The statute makes no exception for the time of membership (although in the 1952 Act there is provision for suspension of deportation for those who have not been Party members for the past ten years and who meet other conditions).[13] Nor is exception made for the length or prominence of membership, so long as the membership was voluntary and conscious. This represents a deliberate Congressional judgment. As far back as the Alien Registration Act of 1940, the report on the bill declared (S. Rep. 1796, 76th Cong., 3rd Sess.):

> Section 23 amends the act of October 16, 1918, which provides for the exclusion and deportation from the United States of aliens who are members of the anarchistic and similar

[13] Section 244 (a) and (c) of the Immigration and Nationality Act of 1952, 66 Stat. 215–216.

> classes, so as * * * to also provide that any alien who has been a member of such classes at any time after his admission to the United States (*for no matter how short a time or how far in the past so long as it was after the date of entry*), shall be deported. [Emphasis added.]

See also Conference Report, H. Rep. 2683, 76th Cong., 3rd Sess., p. 9. This Court so recognized in the *Coleman* and *Mascitti* cases, covered by the decision in *Harisiades* v. *Shaughnessy*, 342 U. S. 580, where, although the period of the membership was longer than petitioner's, it was in Mascitti's case older, and in Mrs. Coleman's less active. See the Government's brief in Nos. 43, 206, 264, O. T. 1951, pp. 9–10, 13–14. In particular, as the legislative history set forth in the Governments' *Harisiades* brief makes clear (No. 43, O. T. 1951, pp. 72–79), and as this Court recognized in its *Harisiades* opinion (342 U. S. at 595–596), Congress deliberately chose not to make deportation turn on length of membership because of exactly the situation presented by this case, where the termination of membership came, not because of any change of heart at the time, but because of the fear of deportation proceedings (*supra*, pp. 6–7).

As we have already pointed out, the only test of deportability under the statute is whether the alien joined the Party with knowledge that he was joining that specific organization and "of his own free will" (*Galvan* v. *Press*, *supra*, 347 U. S. at 528). Petitioner meets that test. He joined the Party knowing that it was such; he was an adult at the time; he was not compelled to join by duress, economic or political.

What he did was not done under misapprehension or accidentally, but because he believed the Party served a purpose at the time. Though his period of membership may have been relatively brief, it was not inactive or passive. The sum of it is that, as in Galvan's case, "the record does not show a relationship to the Party so nominal as not to make him a 'member' within the terms of the Act" (347 U. S. at 529).

E. NO VALID REASON WARRANTS REOPENING THE ADMINISTRATIVE PROCEEDINGS FOR RECONSIDERATION BY THE IMMIGRATION AND NATURALIZATION SERVICE

Petitioner argues that, at the least, the case should be remanded for further administrative action since, on his interpretation, the Immigration and Naturalization Service failed to apply the correct legal standard of membership. But in the terms of the 1951 amendment and this Court's decision in *Galvan,* as developed above, there are no facts on which a valid claim of unknowing or nominal membership could be predicated. There is no dispute as to the basic fact that petitioner did join the Communist Party knowing it to be such, attended meetings, ran its bookstore, and resigned only because of the fear of deportation proceedings. On these facts, as we have shown, he was clearly a "member."

Petitioner made no claim that his admitted membership in the Party had been only "nominal" either at the time of his deportation hearing (R. 16–20) or on the administrative appeal (R. 9–15), but based his defense to the deportation charges solely on the

ground that Section 22 was unconstitutional and that there were procedural irregularities in the hearing.[14] It cannot be assumed therefore that the immigration authorities applied an erroneous definition of membership in petitioner's case, or would have failed to consider his claim to "nominal" membership had it been fairly presented.

Petitioner relies on *Garcia* v. *Landon,* 348 U. S. 866, where after this Court had granted a writ of certiorari (347 U. S. 1011) the Immigration and Naturalization Service moved before the Board of Immigration Appeals to withdraw the outstanding warrant of deportation and reopen the proceedings to permit Garcia to present evidence as to whether his membership in the Communist Party was voluntary, and to apply for discretionary relief under the 1952 Act. In Garcia's case, however, there were facts which raised an issue as to whether his membership was voluntary under the caveat in *Galvan.* Garcia had only three years schooling in Mexico and had such a limited knowledge of the English language that his hearing had to be conducted through an interpreter. R. 21, 36, No. 118, Oct. Term 1954. He contended that during a period of unemployment, and having a large family then consisting of a wife and six or seven small children to support, he turned to the Workers Alliance (which held meetings in the same hall as the Communist Party) to get food and shoes for his family. Garcia asserted that he made no application

[14] This was also his position in the petition for a writ of habeas corpus (R. 1–3).

for Communist Party membership, paid no dues, held no office or official position in the Party, and (if he was a member) dropped out voluntarily when the employment situation improved (*Ibid.*, pp. 41–42). It was also uncertain on that record whether he distinguished between the Communist Party and the Workers Alliance. There was thus a possibility that Garcia could show that his connection with the Party was not a knowing one. No equivalent facts are presented here, and the record is clear.

While this Court's decision in *Galvan* had not been handed down at the time of petitioner's deportation hearing, that ruling did not read new meaning into the term "member" in Section 22 of the Internal Security Act, but merely confirmed that the term was intended to import the same meaning as before the 1950 Act, and as further defined in the 1951 clarifying legislation (347 U. S. at 527–528). On the basis of this understanding, the Court found no need to vacate the administrative findings as to *Galvan* since there was no ambiguity in the controlling findings or error of law appearing on the face of the record.

In the instant case, there is even less reason to reopen the administrative record on the assumption that the Service misconstrued the law it was administering. By the time of this petitioner's deportation hearing, the misunderstanding as to the proper meaning of the term "member" had been dispelled by the passage of the 1951 clarifying legislation, and the promulgation of a new regulation of the Immigration and Naturalization Service redefining or, more

properly, clarifying the term for administrative purposes.[15] Moreover, the issue here does not depend upon the resolution of conflicting facts, but on whether petitioner was, by his own admissions, a "member" as that term is used in the statute. This question is essentially one of law, and no purpose would be served by remand of the cause to the administrative agency.

II

THERE IS NO REASON TO RECONSIDER THE CONSTITUTIONAL HOLDING OF *Galvan* v. *Press*

A. In his petition for a writ of certiorari, petitioner stated as his second question presented (Pet. 2) "whether, notwithstanding *Galvan*, the statute providing for deportation of aliens for past membership in the Communist Party is unconstitutional on its face or as applied to the facts in this case." Without elaborating on that point in argument he asked the Court to overrule its *Galvan* decision, and, alternatively, to consider (Pet. 10) "whether the statute sustained in *Galvan* can reach so far as to be constitutionally applied on the facts in this case." In his brief on the merits, however, petitioner does not pursue

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[15] This regulation provided (8 C. F. R. [1951 Supp.] 174.1 (i), 16 F. R. 2907 (April 4, 1951)):

"The terms 'members of' and 'affiliated with' where used in the act of October 16, 1918, as amended, shall include only membership or affiliation which is or was voluntary, and shall not include membership or affiliation which is or was solely (1) when under sixteen years of age, (2) by operation of law, or (3) for purposes of obtaining employment, food rations, or other essentials of living, and where necessary for such purposes."

the argument that this case raises additional constitutional problems not present in *Galvan* but seeks solely to reargue constitutional issues which were before the Court not only in *Galvan,* but also in *Harisiades* v. *Shaughnessy,* 342 U. S. 580.

It is the government's position that the issues now argued by petitioner have been firmly settled. During the past five years they have twice been fully presented to the Court, in detail, and have twice been decided in comprehensive opinions. Petitioner brings forward no argument which has not been made heretofore. No changed conditions are, or can be, alleged; nor is the Court being asked to review decisions rendered in a period or milieu said to be outmoded, or based on constitutional principles which are no longer accepted or have been limited since the challenged decisions were rendered. Since *Galvan,* the Court has twice recognized its constitutional principles as settled. *Jay* v. *Boyd,* 351 U. S. 345, 348 (recognizing the power in Congress under Section 22 to deport an alien who was a voluntary member of the Communist Party during the period 1935–1940); *Marcello* v. *Bonds,* 349 U. S. 302, 314 (rejecting the contention that deportation for crimes committed prior to passage of Section 241 (a) (11) of the Immigration and Nationality Act of 1952 is violative of the *ex post facto* clause). See also *MacKay* v. *Boyd,* 218 F. 2d 666 (C. A. 9), certiorari denied, 350 U. S. 840.

In these circumstances, we submit that there is no occasion for a third reconsideration by the Court of the governing constitutional ruling and no need to

reargue the issues which are extensively discussed in the Government's briefs in *Harisiades* (Nos. 43, 206, 264, Oct. Term, 1951) and *Galvan,* No. 407, Oct. Term, 1953.

B. While we shall not here reargue the constitutionality of Section 22 or the validity of this Court's reasoning sustaining that position, it is appropriate to point out a fundamental error in petitioner's argument on this point. The Government's brief in *Galvan* (No. 407, Oct. Term 1953, pp. 40–54) reviewed at some length the nineteen-year history of exhaustive congressional inquiry which resulted in the legislative determination that past membership in the Communist Party was a reasonable basis for the deportation of aliens—the policy underlying the enactment of Section 22 of the Internal Security Act of 1950 and the comparable provisions of the 1952 Act. The Court, after adverting to this "extensive investigation" and the legislative findings incorporated in Section 2 (1) of the Internal Security Act that the "Communist movement * * * is a world-wide revolutionary movement whose purpose it is, by treachery, deceit, infiltration into other groups (governmental and otherwise), espionage, sabotage, terrorism, and any other means deemed necessary, to establish a Communist totalitarian dictatorship", concluded that it could not judicially determine (347 U. S. at 529) "that this classification by Congress is so baseless as to be violative of due process and therefore beyond the power of Congress." Petitioner, however, conceives the *Galvan* holding to mean that (Pet. Br. 25) "Congress may expel aliens for causes which have no ra-

tional relationship to their desirability as residents, and which may be wholly arbitrary, whimsical, or worse."

It is not necessary here to consider hypothetical situations in which this legislative power might be exercised on the basis of bare pretense or caprice or out of concern for wholly non-existent dangers either to national sovereignty or to international relations. The legislative policy toward alien membership in the Communist Party incorporated in Section 22 of the 1950 Act was developed and continued upon the basis of several studies by congressional committees, which concluded that the Communist movement in this country is heavily laden with aliens, and that Soviet control of the American Communist Party has been largely through alien Communists (*Harisiades* v. *Shaughnessy, supra,* 342 U. S. at 590). Congress also had evidence that, unless its deportation legislation reached past members of the Communist Party, aliens would, as in the past, drop their membership—as did petitioner—or be expelled from the party only to avoid deportation and not as a genuine renunciation of methods of force and violence. See the Government brief in *Harisiades,* Nos. 43, 206, 264, Oct. Term, 1951, pp. 72–95. In enacting Section 22, Congress was not setting up a standard of personal guilt but was classifying aliens whom it deemed undesirable residents of the country, and it could conclude, on the basis of its studies and inquiries, that past members of the Communist Party comprised a class sufficiently inimical to present and future national security to warrant expulsion. *Harisiades* v. *Shaughnessy, supra,*

342 U. S. at 595–596. As the Court held in *Galvan*, this classification by Congress is not (347 U. S. at 529) "so baseless as to be violative of due process and therefore beyond the power of Congress."

But the Court did not hold that all immigration legislation, however fantastic or arbitrary, is wholly freed from the constitutional limitation of substantive due process, and from all judicial review under that standard. It held that the formulation of immigration *policies* which "are peculiarly concerned with the political conduct of government" is "entrusted exclusively to Congress." 347 U. S. at 531.[16] This position is not an abrogation of the judicial function (see Pet. Br. 25), but judicial deference to a legislative determination of policy in respect to the exercise of a power given Congress by the Constitution, and delegated by it to the executive arm of the government for administration. It is also a recognition of the basic principle that each of the three coordinate branches of government is equal in respect to the others, though supreme in its particular area of competence. And as this Court observed in *Harisiades* (342 U. S. at 588–589), "any policy toward aliens is vitally and intricately interwoven with contemporaneous policies in regard to the conduct of foreign relations, the war power, and the maintenance of a republican form of government", and such matters are "so exclusively entrusted to the political branches of government as to be largely immune from judicial inquiry or interference."

[16] See also *Shaughnessy* v. *Mezei*, 345 U. S. 206, 210; *Harisiades* v. *Shaughnessy*, 342 U. S. at 589.

Petitioner's arguments seeking to impeach the factual premises of this legislative policy (Pet. Br. 42–48; Appendix to Pet. Br.) do not justify judicial reevaluation of these reiterated congressional conclusions. And though there well may be hardship to himself and to the other aliens in the cases which he cites (Pet. Br. App.), it is not the function of the courts to overturn a legislative determination in this field because it is severe or entails individual suffering or may well be a "legislative mistake". *Harisiades*, 342 U. S. at 590; *Galvan*, 347 U. S. at 530–1; *Shaughnessy* v. *Mezei*, 345 U. S. 206, 216; *Fong Yue Ting* v. *United States*, 149 U. S. 698, 731; *Li Sing* v. *United States*, 180 U. S. 486, 495; *United States ex rel Klonis* v. *Davis*, 13 F. 2d 630, 630–1 (C. A. 2) (L. Hand, J.).

CONCLUSION

For the foregoing reasons, it is respectfully submitted that the judgment below should be affirmed.

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